

## FOR THE NORTHERN DISTRICT OF ILLINOIS

## EASTERN DIVISION

UNITED STATES OF AMERICA ex rel. )

SAM COOK, B-39841, )

Petitioner, )

v. )

TERRY McCANN, )

Respondent. )

NO. 07 C 6851

**FILED**JAN 02 2008 *aw*MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURTNOTICE

Please take NOTICE that I have on this 01 day of 2007 ==,  
2007, filed with the CLERK, OF THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, a copy of the attached;  
PETITIONERS REPLY TO MEMORANDUM ORDER OF DECEMBER 11, 2007, by placing same  
in the U.S. mail at BX 112, JOLIET, IL. -60434.

Sam Cook  
SAM COOK, B-39841-Petitioner, Pro Se

IN COMPLIANCE WITH TITLE 28 SECTION 1741

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT OF MY OWN PERSONAL KNOWLEDGE.

Sam Cook  
SAM COOK, B-39841, Petitioner, Pro Se

Box 112

Joliet, Il. - 60434

ECUTED - ON :

12-21-2007

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA ex rel. )

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CLERK, U.S. DISTRICT COURT**PETITIONER REPLY TO MEMORANDUM ORDER OF DECEMBER 11, 2007.

Now comes the Petitioner, SAM COOK, B-39841, Pro Se, and respectfully replies to the order by this Honorable court of DECEMBER 11, 2007, in which this Honorable Court requested that petitioner reply to the sole issue of the one-year statutory limitations.

In response thereof, petitioner would respectfully submit the following to this Honorable Court.

1. Petitioner filed all of his state court proceedings in compliance with state statute and rules governing his appeal and post conviction petition, however, there was numerous lock-downs at the prison and other issues that made it hard to file some papers, but, all were filed timely.

2. Petitioner cannot be held to be at fault for the delays in the Illinois Court proceedings, for it would be impossible for any petitioner in and Federal proceeding to get a state court to move properly on a issue before it.

3. Petitioner would respectfully submit to this Honorable Court that the very essences of day v. McDonough, 547 U.S. 198(2006) was to allow a state petitioner were it is appropriate for a Federal Court to sua sponte a timeliness issue, the United States Supreme court stated that

"In sum, we hold that district courts are permitted, but not obliged, to

consider, sua sponte, the timeinless of a state's prisoner's habeas corpus petition. We so hold, noting that it would make scant sense to distinguish in this regard AEDPA's time bar from other threshold constraints on federal habeas petitioners." Day,id. at 210 went on to say:

Of couse, before acting on its own initiative, a court must accord the part fair notice and an opportunity to present their positions.

In the instant action, that is exactly what this Honorable Court has done, in the interest of fairness and justice.

It must be pointed out to this Honorable Court that in Lawrence v. Florida, 127 S.Ct. 1079,1082-85(2007) the United States Supreme Court placed the end date for the tolling provision under Section 2241(d)(2) is the date of ultimate disposition of the state post=conviction proceeding in the state courts--.

4. In the instant cause before this HOnorable Court it is apparant that because the mathematical calculations that have been made here are based squarely on the unambiguous statutory and caselaw language, petitioner must address the issue head=on, for, in the interest of fairness and justice to the petitioner, the issue of timeliness is one of importance and the sole issue of this ORDER, henceforth, petitioner would state that his petition is mertious, and that his issues are one of constitutional merit. Petitioner would further state that the issue is one that he is not at fault of and this Honorable Court must take judicial notice of that fact, for it is beared out by the records in this action. Petitioner, cannot, in all fairness be held at fault for delays by state courts or prisoner lock=downs. One of the reasons in Day,id. was to allow the district court in its good judgment to allow a state prisoner to proceed in a habeas petition, if good cause is shown on the issue of timeliness and petitioner if not at fault and complied with all statutory requirements in the proceeding, which in the instant action, petitioner did.

5. Petitioner would respectfully submit to this Honorable Court that there is in fact good reason not to enforce the one-year statutory limitation in this cause, It is in the interest of justice and fairness to the petitioner to not enforce the limitation, for the petition on its face is one of merit and if this Honorable Court does not allow it, petitioner will suffer a grievous constitutional loss on issues that have constitutional merit and cannot be addressed anywhere else but the Federal Forum. It is in the interest of justice and fairness to allow this petition to proceed and address the constitutional violations alleged therein.

It is the duty of a federal court to correct wrongs that are done by a state court if they violated the constitution of the United States or misapplied clearly established case law as outlined by the United States Supreme Court.

WHEREFORE, the Petitioner would respectfully pray that this Honorable Court ALLOW the petition to proceed and NOT ENFORCE the ONE-YEAR STATUTORY LIMITATION. in the interest of fairness and justice to the petitioner.

DATED: 12-21-2007, 2007:

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Sam Cook", is written over a horizontal line.

SAM COOK B - 39841, PETITIONER, Pro Se  
BOX 112  
JOLIET, IL. = 60434

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**Report of Proceedings ("R")****Direct****Cross****Redir.****Recr.**

Handwritten letter asking "to allow this  
petition for supplemental brief" - considered a  
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J3